

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

EXPERIOR GLOBAL WAREHOUSING,
LLC and LYNX HOLDINGS, LLC,

Plaintiffs,

v.

BTC III HAMILTON DC LLC and ARES
MANAGEMENT, LLC,

Defendants.

Civil Action No. 23-8472 (RK) (JBD)

MEMORANDUM ORDER

THIS MATTER comes before the Court upon Plaintiffs' Motion to Stay, (ECF No. 72), which seeks the Court to stay its Order Denying Plaintiffs' Motion for Preliminary Injunction, (ECF Nos. 69 and 70). On October 13, 2023, the Court granted Plaintiffs' application for a Temporary Restraining Order (the "TRO"), enjoining Defendants from obtaining the proceeds of a specified Letter of Credit. (ECF No. 16.) After further proceedings and settlement discussions described in the Court's prior Opinion, (*see* ECF No. 69), the Court denied Plaintiffs' Motion for a Preliminary Injunction and vacated the temporary restraints imposed in the TRO on July 15, 2024, (ECF No. 70). The following day, Plaintiffs filed a Notice of Appeal, (ECF No. 71), and on July 17, Plaintiffs filed a Motion to Stay the Court's Order pending resolution of Plaintiffs' appeal to the Third Circuit, (ECF No. 72). Plaintiffs filed an affidavit with their Motion indicating that the Letter of Credit would be drawn down on July 23, 2024 absent a Court order enjoining such action. (*See* July 17, 2024 Aff. of Michael Scialabba, ECF No. 72-2.) On July 18, 2024, Defendants filed a letter opposing Plaintiffs' requested relief. (ECF No. 74.)

Plaintiffs seek a stay pursuant to Federal Rule of Civil Procedure 62, which provides for the Court to enter an injunction "[w]hile an appeal is pending from an interlocutory order or final

judgment that grants, continues, modifies, refuses, dissolves, or refuses to dissolve or modify an injunction” Fed. R. Civ. P. 62(d). “Injunctions pending appeal, like preliminary injunctions, are ‘extraordinary remed[ies] never awarded as of right.’” *Donald J. Trump for President, Inc. v. Sec'y of Pa.*, 830 F. App'x 377, 389 (3d Cir. 2020) (quoting *Winter v. NRDC*, 555 U.S. 7, 24 (2008)). A Court considering whether to stay its decision pending appeal considers:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Nken v. Holder, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunkill*, 481 U.S. 770, 776 (1987)). The movant bears the burden of demonstrating the first two factors, which are the “most critical.” *Reilly v. Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017).

The Court’s analysis of the four factors considered in a motion for a stay pending appeal follows from its analysis of the same four factors considered in a motion for a preliminary injunction. (*See* ECF No. 69 at 14–28); *see also Conestoga Wood Specialties Corp. v. Sec'y of U.S. Dep't of Health & Hum. Servs.*, No. 13-1144, 2013 WL 1277419, at *1 (3d Cir. Feb. 8, 2013) (“[T]he standard for obtaining a stay pending appeal is essentially the same as that for obtaining a preliminary injunction.”). While the tenor of Plaintiffs’ description of the business harms they allegedly face appears more urgent than in the record before the Court in deciding the Motion for Preliminary Injunction, the arguments and evidence are largely the same. (*See generally* ECF No. 72-1.) For the reasons set forth in the Court’s July 15, 2024 Opinion, the Court finds that Plaintiffs have not met their burden to establish reasonable likelihood of success on the merits or irreparable injury. Because Plaintiffs have failed to carry their burden on the first two factors, the Court does not reach the remaining two.

IT IS on this 18th day of July, 2024,

ORDERED that Plaintiffs' Motion to Stay, (ECF No. 72), is **DENIED**;

ORDERED that the Clerk's Office terminate the Motion pending at Docket No. 72.

ROBERT KIRSCH
UNITED STATES DISTRICT JUDGE